

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:09-cv-321-H**

Oscar Albritton)	
Plaintiff,)	PLAINTIFF'S
)	MOTION TO STRIKE
vs.)	DEFENDANTS' SUGGESTION OF
)	SUBSEQUENTLY DECIDED
Sessoms & Rogers, P.A.;)	CONTROLLING AUTHORITY
Richard J. De Giacomo, Jr.;)	
North Star Capital Acquisitions, LLC;)	
<u>Defendants.</u>)	

**PLAINTIFF'S MOTION TO STRIKE DEFENDANTS'
SUGGESTION OF SUBSEQUENTLY DECIDED CONTROLLING AUTHORITY**

Plaintiff Oscar Albritton files this Motion to Strike Defendants' Suggestion of Subsequently Decided Controlling Authority (D.E. #24) and in support hereof, states the following:

1. On July 15, 2009, Mr. Albritton filed his Complaint against Defendants Sessoms & Rogers, P.A., Richard De Giacomo, Jr., and North Star Capital Acquisitions, LLC for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"). Mr. Albritton's claims arise out of the submission of a deceptive affidavit in a state court proceeding.

2. On September 11, 2009, Mr. Albritton filed an Amended Complaint. (D.E. # 16).

3. On October 2, 2009, Defendants moved to dismiss Plaintiff's Complaint pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6) (D.E. # 20), and filed a Memorandum of Law In Support thereof. (D.E. #21).

4. On October 22, 2009, Plaintiff filed his Memorandum in Opposition to Defendants' Motion to Dismiss (D.E. # 22).

5. On November 5, 2009, Defendants filed their Reply in Support of Defendants' Motion to Dismiss (D.E. #23).

6. On November 10, 2009, Defendants' Motion to Dismiss was submitted to chambers.

7. Three months later, on February 11, 2010, Defendants filed their Suggestion of Subsequently Decided Controlling Authority, purportedly pursuant to Local Civil Rule 7.1(g) (D.E. #24). Defendants' Suggestion states, "Defendants submit the Order, O'Fay v. Sessoms & Rogers, P.A. No. 5:08-CV-615-D (E.D.N.C. Feb. 9, 2010), from this Court as subsequently decided authority on this Court's adoption of the 'materiality' standard for claims under 15 U.S.C. § 1692e." (D.E. #24, p. 1).

8. Defendants violated Local Civil Rule 7.1(g) by including argument in its Suggestion of Subsequently Decided Controlling Authority.

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WHEREFORE, Plaintiff requests this Court to strike Defendants' Suggestion of Subsequently Decided Controlling Authority, and for such other relief the Court determines to be just and proper.

Dated: February 25, 2010

Respectfully submitted,

MARTIN ATTORNEY AT LAW, PLLC

By: /s/ Angela Martin

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CERTIFICATE OF SERVICE

I certify that on February 25, 2010, I electronically filed the foregoing Memorandum Support of Plaintiff's Motion to Strike Defendants' Suggestion of Subsequently Decided Controlling Authority with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted this 25th day of February, 2010,

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